



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2004

Ms. Lois Cochran  
Records Coordinator  
City of Cleburne  
P.O. Box 677  
Cleburne, Texas 76033-0677

OR2004-7716

Dear Ms. Cochran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208698.

The City of Cleburne (the "city") received two requests for information pertaining to specified case numbers. You indicate that the first request was received on April 19, 2004, and that the city released the available information pertaining to case number 241986 to the requestor at that time. However, you indicate that the city has subsequently developed additional information pertaining to case number 241986, and you seek to withhold the additional information from both requestors. We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Accordingly, information created by the city after the city received the April 19, 2004 request is not responsive to that request and need not be released to that requestor. Because you state you have already released the information that was responsive to the April 19, 2004 request at the time the request was received, we do not further address your claims with respect to that request. With respect to the second request, you state that the city is releasing the same information that was previously released to the first requestor. You claim, however, that the remaining information at issue, which pertains to case numbers 241986 and 243265, is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim for the

information pertaining to case numbers 241986 and 243265 and reviewed the submitted information.

We begin by noting that the information submitted as Exhibit 2 contains an ST-3 accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In this case, the requestor has not provided the required two pieces of information. Accordingly, the ST-3 accident report form we have marked is confidential under section 550.065(b) and must be withheld pursuant to section 552.101.

We next the information pertaining to case number 243265, submitted as Exhibit 6. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the records in Exhibit 6 were used or developed in an investigation of alleged or suspected child abuse or neglect. Thus, we find that Exhibit 6 is within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we determine that Exhibit 6 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold Exhibit 6

from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law.

We next note that the information submitted as Exhibits 2 and 3 contains information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. The city must withhold the information we have marked in Exhibits 2 and 3 pursuant to section 552.130 of the Government Code.

Finally, you contend that the remaining information pertaining to case number 241986, which you have submitted as Exhibits 4 and 5, is excepted under section 552.108 of the Government Code. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that case number 241986 relates to a pending criminal investigation. Based on your representations and our review, we determine that the release of Exhibits 4 and 5 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold Exhibits 4 and 5 from disclosure pursuant to section 552.108(a)(1). We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the ST-3 accident report form in the submitted documents must be withheld under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. Exhibit 6 must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. We have marked information that must be withheld under section 552.130 of the Government Code. With the exception of basic information, which must be released, the city may withhold Exhibits 4 and 5 under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 208698

Enc: Submitted documents

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